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GOVERNOR



LEONARD PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
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COMMISSIONERS
DENISE MOORE DAVIDSON,
CHAIR
WILLIAM D. DONAN

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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF JUNE 12, 2008: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Denise Moore Davidson, and Commissioner William D. Donan were present. Also in attendance was the MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 p.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Counsel for the Kentucky Department of Natural Resources, Office of Legal Services was present representing the Office of Mine Safety and Licensing. General Counsel DNR Mike Haines, his assistant Kari Sutherland, and staff attorneys for OLS were present as counsel for OMSL.
- ❑ The **minutes** for the meeting on **05/08/08** were discussed. Commissioner Donan made a motion for approval, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the minutes.

Motions - various;

- 06-MSRC-081 **Roger D. Little** was called upon a Sua Sponte Motion for Show Cause as to why his certificates should not be **permanently revoked** due to his failure to submit drug tests and his subsequent failure to return the *Amended* Settlement Agreement tendered to him that would allow him another opportunity to comply and retain his certifications. Little did not appear or participate. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- 07-MSRC-090 **Jeffery Slone**: was called upon a Sua Sponte Motion for Show Cause as to why his certificates should not be revoked for one (1) year due to his failure to return the Settlement Agreement tendered to him that would allow him to retain his certifications. Upon the Motion of OMSL and his Attorney **Hon. Parker**, this matter was **continued** to July 10. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- 08-MSRC-090 **Ronnie L. Caldwell**: was called upon a Sua Sponte Motion for Show Cause as to why his certificates should not be **revoked** for one (1) year due to his failure to return the Settlement Agreement tendered to him that would allow him to retain his certifications. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- **OMSL Motions for Sanctions & Permanent Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**
 - 07-MSRC-061 **Jessie W. Creech**, was called. He did not appear or participate and no one on his behalf filed any response. OMSL moved for **permanent revocation** based upon his failure to submit drug tests pursuant to the settlement agreement. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
 - 07-MSRC-008 **William K. Jervis** appeared and requested a **continuance** to prepare his defense or to enter a settlement agreement. He requested to have this matter resolved at the July 10 meeting and he reserved the right to appear and participate at his discretion. Commissioner Donan made a

motion to **grant** the motion which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.

- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**
- The Commission discussed the procedurally similar KRS 351.120(12) appeals of: 08-MSRC-146 **Justin K. Smith**, and 08-MSRC-151 **Todd Barnett** when called. They either appeared or phoned prior to the hearing and moved for **continuances** to **July 10**. Commissioner Donan so moved as to each. These were seconded by Commissioner Davidson. The motions carried unanimously, and were so Ordered. Commissioner Davidson signed the Orders.

The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 08-MSRC-121 **David Shawn Sumner**, 08-MSRC-131 **Gregory A. Baker**, 08-MSRC-135 **Joey S. Hackney**, 08-MSRC-136 **Jason Barger**, 08-MSRC-137 **Jerry L. Jones**, 08-MSRC-138 **Larry Gibson**, 08-MSRC-139 **James D. Dixon**, 08-MSRC-140 **Timothy Wright**, 08-MSRC-146 **Justin K. Smith**, 08-MSRC-147 **Marc Williams**, 08-MSRC-148 **Michael A. Weir**, 08-MSRC-149 **Brandon L. Fannin**, and 08-MSRC-152 **Freddie Hubbard**, in turn. Every one of these Petitioners appeared and tendered a **Settlement Agreement** and Motion to Approve the same. Commissioner Davidson requested and received a waiver from each Petitioner for the determinations on Turner and Miller citing a conflict. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- The Commission called **Jeremy Adams** in 08-MSRC-157 and he requested a hearing. Adams testified that he tested positive for his prescription given to him by his treating physician used outside of the three month company policy, a technical violation of company policy but not of law. He presented documents from his treating physician and hospital records regarding the precipitating injury regarding the prescribed the pain killer shown in the drug test. OMSL stated it had no proof to the contrary. Commissioner Donan made a motion to **grant**, his motion to **sustain and reinstate** his certifications which was seconded as appropriate. Davidson recused citing a conflict and Adams waived any objection regarding the subsequent lack of a quorum. The motion carried, and was so Ordered. Commissioner Donan signed the Order.
- The Commission called also the KRS 351.120(12) Petition for Appeal of 07-MSRC-241 **Johnny Halcomb**, 08-MSRC-078 **Tommy Dewayne Seals**, 08-

MSRC-104 **Chad Bentley**, and 08-MSRC-136 **Jason Barger** who were duly notified and scheduled for the hearing *they* requested for this meeting. **None** of them **appeared** and were each Ordered to **Show Cause** as to why their certificates should not be revoked upon order at the next meeting. Commissioner Donan made the motion for Show Cause which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Orders.

- The Commission also considered 08-MSRC-067 **Travis White**, and 08-MSRC-089 **Johnny Ray Sexton**; who failed to appear despite notice at the last meeting and also failed to appear, answer or participate in the Show Cause set for this meeting. Commissioner Donan made the motion to **revoke** which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” revocations:

- The Commission called and then granted the motions by OMSL for **revocation** in the following procedurally similar cases. No one appeared on behalf of any Respondent miner and no Respondent appeared despite notice by certified mail with a return as to each; 08-MSRC-092 **Ernest W. Helton**, 08-MSRC-093 **Rodney K. Justice**, 08-MSRC-118 **Dustin O. Mullins**, 08-MSRC-126 **Lonnie W. Shemwell**, 08-MSRC-134 **Adam K. Rose**, 08-MSRC-141 **Robert Fugate**, and 08-MSRC-142 **Barry Lynn Powers**. Commissioner Donan made a motion to **grant**, each of the OMSL Motion for Revocations which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission also ruled favorably on the proposed **settlement** tendered in the following OMSL Show Cause hearing for revocation: 08-MSRC-145 & 144 **Kevin S. Biggers**. Commissioner Donan made a motion to **grant**, the OMSL Motion for settlement which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.
- OMSL also moved to **continue** 08-MSRC-134 **Adam K. Rose** to July 10, 2008 for further investigation. Commissioner Donan made a motion to **grant**, the OMSL Motion for settlement which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

- The Commission called **Shannon W. Chaffin** in 08-MSRC-045 and he requested a hearing. Adams testified that he tested negative on drug tests both immediately before and after the alleged refusal. He presented copies of the drug tests and testified that he was ill but offered to test. His attorney in another matter submitted a letter stating his client was being randomly tested as part of the resolution and always tested negative. OMSL stated it had no proof to the contrary. Commissioner Donan made a motion to **grant**, his motion to **sustain and reinstate** his certifications which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Commissioner and Chair Davidson signed the Order.

The 11:00 a.m. Docket for “initial denial” pursuant to KRS 351.184(5) for failure of the pre-certification alcohol and substance abuse testing:

None were submitted for this meeting.

The 11:00 a.m. Docket for Motions to Reconsider:

None were submitted for this meeting.

The 11:00 a.m. Docket for “traditional” type cases:

- Upon the call of 07-MSRC-186 **Williard R. Harmon**, OMSL Counsel Hon. Smock informed the Commission that Respondent in the case did not participate in the pre-hearing and did not participate at this meeting and thus OMSL moved for a **Default**. After consideration MSRC determined that this motion should be **granted**. Commissioner Donan so moved, Davidson gave the second and Davidson signed the Order.
- The Commission called 08-MSRC-128 Johnson et al., Travis Wayne **Pigg**, Chris **Patton** and David Lee **Morgan**, who appeared for settlement. Agreements were tendered as to each and approved by the Commission. Commissioner Donan made a motion to **grant**, as to each and they were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission called 07-MSRC-187 **Dickie L. Cantrell**; and OMSL made a Motion to **Settle** without personal appearance, with the Respondent available by phone and a Motion to Approve Settlement Agreement. Commissioner Donan made a motion to **grant**, as to each and they were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission called 08-MSRC-033 **Short & Gossett**; and OMSL made Motion to Approve the **Settlement** Agreement for **Short** without personal appearance for Short, Counsel Hon. Rubenstein & Hon. Pinson for Short

also joined in this motion. The Motion to Dismiss **Gossett** was **continued** to the July meeting so Counsel for OMSL could seek wavier of a conflict with Commissioner Donan. Commissioner Donan made a motion to **grant**, as to the settlement and it was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

- The Commission called 05-MSRC-010 Banks, Smith & **Horn**: in regard to a settlement for Horn, and OMSL made a motion to **continue** this to the July meeting. Commissioner Donan made a motion to **grant**, the OMSL Motion for continuance which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.
- The Commission called 07-MSRC-125 **Big Elk Mining, Co**, and 07-MSRC-143 **William H. Harris**, and 07-MSRC-167 **Blue Diamond Coal Co**, and was informed by OMSL that settlement was likely, and thus OMSL moved to **continue to August 14**, 2008. Commissioner Donan made a motion to **grant**, as to each and they were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

▪ **Petitions for an Order filed by OMSL in roof control cases:**

None were filed for this meeting.

Old Business

Ratification of Final Order: *None were filed for this meeting.*

□ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday July 10, and the possibility of one traditional type hearing.

□ **Status Report & Abeyances;**

None were scheduled for this meeting.

□ **Appeals**

- The Commission discussed the appeal to Franklin Circuit Court of the Final Order in **Hobert Hoskins** 05-MSRC-007 now 05-CI-01702 in Division I. The Commission was informed that Judge Sheppard Ordered a **briefing schedule**. Counsel for OMSL is to file a Motion to Dismiss for

the reason that the case is moot due to the passage of time exceeding the probationary period ordered with no further violations.

- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Willie "Tick" Sizemore**, et al. and learned that it had been appealed to the **Court of Appeals**.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed that Hon. Barbara Pauley is filing a **briefing schedule**.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of 06-MSRC-005 **McCoy & Short**, 07-CI-1981, Division 1. The matter is being **briefed** by Hon. Larry Moscoe.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated that they were **briefing** the matter.

New Business

- ❑ **Office & Administrative;**
 - ❑ The General Counsel advised that the **mileage** remains to forty five (45) cents per mile.
 - ❑ The Commission was advised that the AOC pay scale increased.
- ❑ **Training**
 - **Required Hearing Officer Training:** Wednesday June 25 2008. Initial training. The required KYOAG annual training hearing officer for all MSRC Commissioners and the General counsel has been **confirmed** for **June 25, 2008**.
- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the Probable Cause Determinations and then reconvened to issue orders below as appropriate.
- ❑ **Probable Cause Determinations**

The following case was discussed and then the Commission determined that Probable Cause was appropriate: 08-MSRC-123 **Osborne & Sandlin**, and

08-MSRC-124 **Cyfers & Williamson**. Commissioner Donan so moved, Davidson gave the second and Davidson signed the Order.

❑ **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.


- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.

- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday July 10, 2008**.

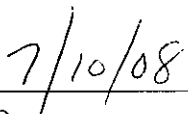
- ❑ **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday July 10, 2008. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Chair Denise Moore Davidson
Mine Safety Review Commission



Date